IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No. 1 of 1996

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)
Versus
BHARAT ENGINEERING CO. - Respondent(s)

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Appearance :
Mr Sunit Shah, GOVERNMENT PLEADER for Applicant(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR JUSTICE R. S. GARG
and
HONOURABLE MR JUSTICE D.H. WAGHELA

Date : 10/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.H.WAGHELA)

1. The Gujarat Sales Tax Tribunal has, at the instance of the Revenue, referred under section 69

of the Gujarat Sales Tax Act, 1969, the following issue for opinion of this Court :

> *"Whether on the facts and in the circumstances of the cases, the decision of the Tribunal is perverse, based on surmises, conjectures on no evidence and/or erroneous and based on misinterpretation of evidence and deserves to be interfered with and quashed, when it held that Hand Operated groundnut decorticating machine used by the opponent herein is covered by entry 19 of Schedule I to the Gujarat Sales Tax Act, 1969 and it does not fall under entry 16(1) of Schedule II-part-A to the Gujarat Sales Tax Act, 1969 ?"*

2. The short facts relevant for the purpose are that the opponent was a dealer registered under the Gujarat Sales Tax Act, 1969 (for short, 'the Act') and had been carrying on the business of manufacturing agricultural implements as also agricultural machines. The opponent was

manufacturing 'Jai Hind' brand hand-operated groundnut decorticating machines and had applied under section 62 of the Act for determination of the rate of tax payable on it. As per their submissions, the machine was considered as an agricultural implement in common parlance and it could be used only by agriculturist by operating it with manual labour for the production of suitable seeds exclusively for the purpose of sowing them. It could decorticate 30 kgs. of groundnuts per hour, which was a slow operation and inexpedient for any commercial purpose. It was also their contention that the Director of Agriculture, State of Gujarat had determined and recognised the machine to be an agricultural implement and fixed its price for being considered as entitled to subsidy from the Government as an agricultural implement. The learned Deputy Commissioner however, took the view that the term “agriculture” did not include the work of preparing seeds for the purpose of sowing and Entry 19 of Schedule I to the Act would be applicable only to the implements which were exclusively used for the agricultural operation. He, therefore, held that the

machine in question was covered by Entry 16 (1) of Schedule II-A to the Act. Being aggrieved by the said determination, the opponent herein filed an appeal, the Tribunal allowed the appeal, set aside the aforesaid order and held that, under the circumstances of the case, hand-operated groundnut decorticating machine sold by the opponent would be covered by Entry 19 of Schedule I to the Act.

3. It was seen from the judgment of the Tribunal in Appeal No. 15/87 of the opponent herein that the Tribunal had elaborately dealt with various aspects of the matter and considered the facts that the machine in question was manually operated, it was meant for use by agriculturist and its commercial use was not viable. By letter dated April 23, 1984 written by the Director of Agriculture to the opponent, under the National Oil-seeds Development Project, the Government was considering to supply at subsidized rate hand-operated ground decorticators to agriculturists and for that, a list of recognised manufacturers of such machine was to be prepared and the opponent was required to submit details of the

machine in the prescribed form. Thereafter the Director of Agriculture had examined the machine on September 4, 1984 and, after demonstration, the Director had accepted the opponent's machine for placing it in the list of agricultural implements to be supplied to the agriculturists on subsidized rate. The opponent was given a specific registration number for that purpose. Thus, in short, the machine sold by the opponent was recognized by the Government as one of the improved implements of agriculture.

4. Entry 19 of Schedule I to the Act read as under:

> *"19. Agricultural implements (excluding varat and varatdi) worked or operated exclusively by human or animal agency exclusively used in agricultural operations and the parts thereof which are ordinarily not also used otherwise than as such parts."*

And Entry 16 (1) of Schedule II, Part – A to the Act read as under:

“16 (1) Machinery used in the manufacture of goods excluding machinery specified in any other entry in this or any other schedule.”

4.1. A bare reading of the above entries would suggest that Entry 16 (1) clearly excluded the items which were falling in any other entry. Therefore, it would be necessary to examine whether the machine in question fell in the specific category covered by Entry 19 of Schedule I. The key words in Entry 19 were: “agricultural implements” worked or operated exclusively by human or animal agency, exclusively “used in agricultural operations”. Therefore, the item which was specified as agricultural implement must also be one used in agricultural operations. By now the word 'agriculture' has acquired much wider connotation than mere tilling of the land. Even attaching a restricted meaning of an 'instrument' to the word 'implement', the words “agricultural implements” would cover all the instruments which are useful in all the operations in which agriculture is involved. It was rightly held by the Tribunal that

agriculture involves so many operations and the implements used for performing any of those operations would fall within the category of 'agricultural implement'. The Tribunal has also referred to the treatment given to the same items in other States to come to the conclusion that there was ample material on record to hold that hand-operated groundnut decorticating machine sold by the opponent was covered by Entry 19.

5. The learned Government Pleader reiterated the argument based on the judgment of the Hon'ble Supreme Court in ***D.H. Brothers Pvt.Ltd. v. Commissioner of Sales Tax, U.P.*** (1991 STC 267) and submitted that the agricultural process came to an end when the crop was harvested and brought home for marketing or for further processing. That conclusion was drawn by the Supreme Court from its earlier judgment in *Commissioner of Income Tax v. Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466).* It was observed therein that there were other operations which were sought to be resorted to by the agriculturist and which were absolutely necessary for the purpose of effectively

raising the produce from the land. There were operations to be performed after the produce sprouted from the land. The other operations to foster growth and preserve it not only from insects and pests but also from depradation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market would all be agricultural operations when taken in conjunction with the basic operations, and it would be futile to urge that they were not agricultural operations.

6. Reading the above observations of the Supreme Court in proper context, it would suggest that the decortication of groundnut was a part of the agricultural operation insofar as it produced seeds for next crop and also rendered the produce fit for market. It was nobody's case that the machine was used in the manufacture of any goods or did not fulfil the other requirements of Entry 19. Thus, whether an agriculturist used the machine for decorticating groundnuts for preparing seeds for sowing or for processing the groundnut for the purpose of market, it would be an agricultural

implement used in agricultural operations and hence covered exclusively by Entry No.19 of Schedule I.

7. In the facts and circumstances of the case and for the reasons discussed hereinabove, we decide the Reference against the applicant and hold that the decision of the Tribunal was not perverse or in any way illegal requiring any interference. The Reference is answered and disposed accordingly.

[R. S. Garg, J.]

[D. H. Waghela, J.]

msp